IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1848 OF 2004

M/s.Poonam Garments, Mumbai .. Petitioner.
V/s.
The Commissioner of Income-tax,
& Another .. Respondents.

Mr.K. Gopal for the petitioner.
Mr.R.V. Desai, senior counsel with Mr.A.S. Rao for the respondents.

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

DATED : 7TH MARCH, 2005.

P.C. :

1. Heard learned counsel for the petitioner and the respondents. Rule. Rule returnable forthwith. Rule is taken on board for final hearing at this stage. The advocate on record for the revenue waives service.

2. Having considered the available material and all the aspects, we are of the view that the application made by the petitioner seeking extension under section 80HHC (2)(a) of the Income Tax Act, 1961 for realisation of outstanding export proceeds requires reconsideration by the Commissioner of Income Tax, Mumbai City XVI, Mumbai. It is so because it is apparent from the particulars available on record that the payment has been received though belatedly, from the concerned parties. The

petitioner in the application is seeking extension under section 80 HHC (2)(a) of the Income Tax Act for realisation of outstanding export proceeds set out the grounds to the effect that, "the importing party fail to make the payment in time which in turn affects our payments. Moreover, due to various problems in India like strikes, late supply of fabrics we are not able to make the deliveries in time and therefore we ship the goods late resulting in orders being cancelled by the original stores". The Commissioner seems to have overstretched the matter by observing that the assessee ought to have established with evidence that he was unable to bring the convertible foreign exchange for the reasons beyond control. The assessee's grounds set out above suggest that it was beyond his control. We are of the view that the matter requires reconsideration by the Commissioner.

3. We, accordingly, set aside the order dated 15th march, 2004 impugned in the present writ petition and direct the Commissioner of Income Tax, Mumbai City XVI, Mumbai to reconsider the petitioner's application dated 26th September, 1997 seeking extension under Section 80 HHC (2)(a) of the Income Tax Act in accordance with law.

4. In the light of our above order, the Assistant Commissioner of Income Tax will decide the notice under section 148 of the Income Tax Act and pass the appropriate order on the objections raised by the assessee regarding reopening of the assessment.

5. Rule is made absolute in the aforesaid terms. However, there will be no order as to costs.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)